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In the Supreme Court of the United States

OCTOBER TERM, 1967

CIVIL AERONAUTICS BOARD, PETITIONER

v.

PAN AMERICAN WORLD AIRWAYS, INC., TRANS WORLD AIRLINES, INC., AND AMERICAN AIRLINES, INC.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE CIVIL AERONAUTICS BOARD

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OPINION BELOW

The opinion of the court of appeals (R. 1119a) is reported at 380 F. 2d 770.

JURISDICTION

The judgment of the court of appeals was entered on July 20, 1967 (R. 1144a). Timely petitions for rehearing and rehearing *en banc* were denied on September 29, 1967 (R. 1146a). The petition for a writ of certiorari was filed on December 22, 1967, and was granted on January 29, 1968. The jurisdiction of this Court rests upon 49 U.S.C. 1486(f) and 28 U.S.C. 1254(1).

STATUTE INVOLVED

The relevant provisions of the Federal Aviation Act of 1958, 72 Stat. 731, as amended, 49 U.S.C. 1301 *et seq.*, are set out in the Appendix, *infra*, pp. 37–40.

QUESTIONS PRESENTED

1. Whether the Civil Aeronautics Board has the statutory power to authorize supplemental air carriers to offer inclusive-tour charter service.

2. Whether the present orders are invalid because of alleged defects in the administrative proceedings.

STATEMENT

In 1962 Congress amended the Federal Aviation Act to authorize the Civil Aeronautics Board to grant certificates of public convenience and necessity for "supplemental air transportation" (Section 401(d)(3) of the Act, 49 U.S.C. 1371(d)(3), App. *infra*, pp. 38–39). "Supplemental air transportation" was defined as "charter trips in air transportation * * * to supplement the scheduled service" which regular-route carriers are authorized to provide (49 U.S.C. 1301(33), App. *infra*, p. 37).

This case involves several Board orders adopted on March 11, 1966, which awarded certificates of public convenience and necessity to various supplemental air carriers[1] authorizing them to engage in "supplemental air transportation (including inclusive tour[2]

[1] Supplemental air carriers previously had been known as "non-scheduled" or "large irregular" air carriers.

[2] In general, "inclusive tours" are synonymous with the familiar "all-expense" or "package" tour which includes not only the basic air transportation but various land arrangements, such as hotel accommodations, meals, and sightseeing; "inclusive-tour

authority) with respect to persons and property" between points in the United States and various foreign points (R. 566a–595a, 1083a–1088a, 1107a–1118a).[3] On the same date the Board also awarded certificates to other supplemental carriers which authorized inclusive tours in domestic operations.[4]

The Board determined that it had statutory power to authorize inclusive-tour charters because: (a) such charters fall within the generally accepted concept of charter operations; (b) the legislative history of the 1962 amendments to the Federal Aviation Act demonstrates that Congress intended to leave the interpretation and application of the term "charter trips" used in the statute largely to the Board;[5] and (c)

---

charters" are arrangements by which the air carrier charters the aircraft to a "tour operator", a travel specialist who sells the package tour to the public for a single price.

[3] Order E–24237 (R. 543a) issued in the *Supplemental Air Service Proceeding* (Docket No. 13795), and Order E–24240 (R. 1060a), issued in the *Reopened Transatlantic Charter Investigation* (All-Expense Tour Phase) (Docket No. 11908), which added inclusive-tour authority to the certificates previously granted to Capitol Airways and Saturn Airways.

[4] Order E–23350 (R. 332a).

[5] In *American Airlines, Inc.* v. *Civil Aeronautics Board*, 348 F. 2d 349 (C.A.D.C.), sometimes referred to as the "split-charter" case, the respondents here challenged an earlier order of the Board in the *Transatlantic Charter Investigation* which permitted the supplementals to charter a single aircraft to two separate groups. They contended that the Board had exceeded its statutory authority, relying upon the same arguments which were advanced to and accepted by the court below in this case. After reviewing the legislative history, the court of appeals concluded that Congress intended to permit the Board to evolve any reasonable definition of charter, so long as the basic distinction between group and individual travel was maintained (348 F. 2d at 354).

such authorization would further the overall purpose of the 1962 amendments, which was to strengthen "the economic outlook for the industry" [6] (Order E–23350, R. 140a, 336a).

Since C.A.B. orders involving international routes must be approved by the President before publication,[7] only the order dealing with domestic service was immediately subject to judicial review. Respondents sought review of that order in the Court of Appeals for the District of Columbia Circuit, contending that the inclusive-tour charters were not "charter trips" and that the Board awards were therefore in excess of its statutory authority. The court rejected respondents' contention and affirmed the order, holding that the Board's interpretation of its statutory authority "comports with the overall statutory intention of Congress." *American Airlines, Inc.* v. *Civil Aeronautics Board,* 365 F. 2d 939, 948.

The awards for international inclusive-tour charters involved in this case were approved by the President a few months after the decision of the District of Columbia Circuit. Respondents abandoned the steps they had taken to seek review of that decision by this Court, thus allowing the decision as to domestic orders to become final. Instead they sought review of the Board's international route orders in the Court of Appeals for the Second Circuit. That court set aside the Board's orders for international service, holding that "the term 'charter trips' was not intended

[6] H. Rep. No. 1177, 87th Cong., 1st Sess., p. 17.

[7] Section 801 of the Act, 49 U.S.C. 1461, App. *infra*, p. 39.

to embrace the inclusive tour charters authorized by the Board's orders" (R. 1131a). The court concluded that inclusive tours "violate basic policies of the Act" because the participants in such tours are solicited from among members of the general public. In reaching this conclusion, the court relied primarily on statements made during the floor debates to which the District of Columbia Circuit had refused to give controlling effect because they were in conflict with the Committee Reports (R. 1136a). In view of its determination that the awards of inclusive-tour authority exceeded the Board's statutory power, the court below did not reach respondents' contentions that the orders were invalid by reason of certain procedural defects.

The alleged procedural defects (discussed *infra,* at pp. 30–35) were: (1) that the record in the *Transatlantic Charter Investigation* (in which some of the certificates were awarded) was unduly stale and should have been reopened for new evidence; (2) that the awards of inclusive-tour authority to two carriers in the *Transatlantic* case contravened this Court's decision in *Civil Aeronautics Board* v. *Delta Air Lines, Inc.,* 367 U.S. 316; and (3) that the awards in the *Transatlantic* case were based in part upon officially noticed data which respondents were given no opportunity to rebut. The Board urged below that consideration of these issues was barred under this Court's decision in *Chicago & S. Air Lines, Inc.* v. *Waterman Steamship Corp.,* 333 U.S. 103, and because they were not raised before the Board; and alternatively, that the allegations of procedural error were without merit.

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SUMMARY OF ARGUMENT

I

The basic purposes of the 1962 amendments to the Federal Aviation Act were to establish a stable and viable role for the supplemental carriers in the air transportation system and to provide the Civil Aeronautics Board with appropriate statutory authority to bring the supplemental carriers within the regulatory scheme of the Act. In resolving the conflict between the economic interests of the supplementals and those of the scheduled carriers, Congress denied the Board the power to authorize supplemental carriers to offer individually-ticketed, point-to-point service in competition with the scheduled carriers. The Act empowers the Board to issue certificates to supplementals for charter services only.

The present controversy arises largely because the Act does not define "charter." The legislative history of the 1962 amendments, however, persuasively demonstrates that Congress intended that the Board should evolve an appropriate definition of charter, so long as it maintained the distinction between group and individually-ticketed transportation. The bill passed by the Senate authorized the Board to issue certificates to supplementals for both charter and individually-ticketed service, and it contained a definition of charter which specifically included the inclusive-tour service here in issue. Since the Senate bill required the Board to include restrictions designed to protect the scheduled carriers in certificates issued for the supplementals' individually-ticketed service, the

definition of charter was necessary to delimit the types of supplemental service which could be authorized without such restrictions. The bill which the House passed, however, did not empower the Board to authorize individually-ticketed service in addition to charter service. The House accepted its committee's recommendation that the bill should not include a definition of charter, because it was preferable for the Board to continue to have authority to define charter so that it could deal effectively with any attempt to distort the charter concept. Congress finally enacted a Conference Committee version of the bill, adopting the House position which limited the supplementals' service to charter trips and continued the Board's authority to define and apply the term charter.

In this context it cannot fairly be said that Congress' failure to include the Senate definition of charter in the Act constitutes a determination to prohibit inclusive-tour charters. The Senate definition was not intended to enlarge the standard definition of charter. By adopting the House rather than the Senate version, Congress merely determined that the Board should not be required to consider inclusive tours to be within the meaning of the term charter. But nothing in the House bill or its enactment history would have prevented the Board from adopting such an interpretation. The court below erroneously relied on personal interpretations made during the floor debates which contradict not only the committee reports but the normal meaning of the statutory language itself.

In view of the fact that Congress left the interpretation of charter to the Board, its interpretation, if

reasonable, should be respected by the courts. The Board's determination that inclusive-tour charters should be authorized is consistent with the established definition of charter in surface transportation. This authorization will effectuate the overall purpose of the 1962 amendments by improving the competitive position of the supplementals and their ability to serve the needs of the public. And the regulations adopted by the Board to govern inclusive-tour operations will assure that this type of service cannot be used as a substitute for the individually-ticketed service of the scheduled carriers.

II

If this Court holds that the Board may authorize inclusive-tour charters, the Court should rule on respondents' procedural objections to the Board's orders, which were not reached by the court below, without remanding for further proceedings. These objections are wholly without merit and should not be allowed to delay the final disposition of a case in which a prompt disposition is significantly in the public interest. The awards of inclusive-tour authority to two supplemental carriers who had previously received certificates in the *Transatlantic Charter Investigation* did not require further hearings. These awards were made as part of a disposition of applications for such authority by all six carriers in the case, some of whom had not previously received certificates. The statutory requirement for further hearings upon modification of a certificate is therefore inapplicable, and in all events the awards were made on the basis of full

hearings. The adequacy of the record in the *Transatlantic* case was a matter committed to the Board's discretion, and since respondents failed to assert any matter on which new evidence would be required, the Board did not abuse its discretion by refusing to reopen the hearings. Finally, respondents were not prejudiced by the Board's taking official notice of certain information, most of which was contained in reports which respondents had filed with the Board.

ARGUMENT

I. THE FEDERAL AVIATION ACT EMPOWERS THE CIVIL AERONAUTICS BOARD TO AUTHORIZE SUPPLEMENTAL AIR CARRIERS TO OFFER INCLUSIVE-TOUR SERVICE AS A FORM OF "CHARTER" SERVICE

A. THE 1962 AMENDMENTS TO THE ACT GRANT THE BOARD A BROAD DISCRETION TO DEFINE "CHARTER" SERVICE

1. The 1962 amendments to the Federal Aviation Act culminated nearly fifteen years of unsuccessful efforts by the Board to provide appropriate regulation of the supplemental air transportation industry under existing legislation.[8] Prior to and during World War II, the supplementals, then known as "irregulars,"

[8] The Board's efforts to regulate the supplemental carriers prior to the 1962 amendments are more fully described in the congressional committee reports accompanying that legislation. See S. Rep. No. 688, 87th Cong., 1st Sess., pp. 9–11 (Legislative Materials 112b–116b; hereinafter cited as Senate Rep.); H. Rep. No. 1177, 87th Cong., 1st Sess., pp. 7–9 (Legislative Materials 34b–39b; hereinafter cited as House Rep.). Excerpts from the legislative history of the 1962 amendments have been collected and reprinted as a separately bound appendix to the briefs of petitioners in this case and in Nos. 800 and 969. Citations to material reprinted therein will be accompanied by citations to the relevant pages in the "Legislative Materials."

were permitted to operate without certificates of public convenience and necessity under a blanket exemption issued by the Board pursuant to Section 416(b) of the Act (49 U.S.C. 1386(b). After the War, both the number of irregular carriers and the size of their aircraft increased substantially as the civilian market received an influx of large, transport-type aircraft and flight-trained personnel. The Board revised its exemption regulations in 1947 to preclude non-certificated irregular carriers operating large aircraft from offering individually-ticketed service "regularly or with a reasonable degree of regularity" between any two points; under the criteria established by the Board, as many as 8 to 12 flights per month could be made between the same points.

This limitation proved exceedingly difficult to enforce,[9] however, and in 1951 the Board initiated the *Large Irregular Air Carrier Investigation* (Docket 5132) for the purpose of determining the appropriate role of the large irregular carriers in the national air transportation system. The Board completed the first stage of this investigation in 1955 and issued findings that the large irregular carriers performed important supplementary services for military and civilian travelers which the regularly scheduled carriers could not

[9] One of the principal abuses was the "combine" operation, an arrangement whereby several irregular carriers pooled their operations to provide, in effect, daily scheduled service in competition with certificated carriers. See *Large Irregular Air Carrier Investigation*, 22 C.A.B. 838, 867–869, 931. See also *North American Airlines* v. *Civil Aeronautics Board* (North American Combine case), 240 F. 2d 867 (C.A.D.C.), certiorari denied, 353 U.S. 941.

economically perform.[10] The Board concluded that it would be in the public interest, and would not adversely affect the certificated carriers, to authorize the irregular carriers to offer unlimited charter service and scheduled, individually-ticketed service, limited to ten flights per month in the same direction between any two points.[11]

In 1959 the Board completed the second stage of the investigation—to determine the qualifications of individual carriers and the method by which the services should be authorized—and issued an order granting certificates of public convenience and necessity to 23 supplemental carriers authorizing them to perform the services described in its 1955 order.[12] On appeal, the Court of Appeals for the District of Columbia Circuit held that the certificates were invalid, in part because the Board was precluded by Section 401(e) of the Act[13] from issuing certificates which restrict the right of the carrier to add to or change schedules.

[10] See *Large Irregular Air Carrier Investigation*, 22 C.A.B. 838, 859–860.

[11] See *Large Irregular Air Carrier Investigation*, 22 C.A.B. 838, 866–872. As part of this order, concluding the "public interest issues" stage of the investigation, the Board issued an exemption giving the entire class of carriers the new authority on an interim basis, pending determination of the qualifications of individual carriers. In *American Airlines, Inc.* v. *Civil Aeronautics Board*, 235 F. 2d 845 (C.A.D.C.), certiorari denied, 353 U.S. 905, the court set aside this order on the ground that the Board had not made the statutorily required findings to support its exemption order (*id.* at 851–853). The court stayed its mandate, however, pending the Board's disposition of the remaining issues in the investigation, and the supplementals continued to operate under the new exemption standards.

[12] *Large Irregular Air Carrier Investigation*, 28 C.A.B. 224.

[13] 72 Stat. 755, 49 U.S.C. 1371(e) (1958).

United Air Lines, Inc. v. *Civil Aeronautics Board*, 278 F. 2d 446, vacated, 364 U.S. 297.

2. The Board thereupon submitted to Congress proposed legislation which would have given it the authority to issue certificates for supplemental air transportation containing limitations on the type and extent of service.[14] During the hearings, representatives of the scheduled-route carriers strongly opposed any grant of authority to the Board to permit supplemental carriers to maintain individually-ticketed, point-to-point service on a limited-schedule basis. All witnesses agreed, however, that the basic role of the supplemental carriers was to provide charter service.[15]

The bill passed by the Senate authorized the Board to issue certificates to supplemental carriers for both charter and individually-ticketed operations.[16] In addition, the Senate bill included a definition of "charter service" which specifically covered the inclusive-tour charters here in issue:

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[14] Legislation proposing to give the Board this authority was introduced in April 1960 but was not enacted prior to the adjournment of the 86th Congress. Senate Rep. at 11 (Legislative Materials 116b); however, the 86th Congress passed legislation validating the certificates containing the ten-trip-per-month authority until March 1962. P.L. 86–661, 74 Stat. 527 (Legislative Materials 240b–242b).

[15] Senate Rep. at 12 (Legislative Materials 118b); House Rep. at 10 (Legislative Materials 40b).

[16] S. 1969, 87th Cong., 1st Sess., Sections 1 and 2 (Legislative Materials 92b–93b) [References to the Senate bill are to the substitute bill (also designated S. 1969), prepared and reported out by the Senate Commerce Committee and passed by the Senate, which is reprinted at pp. 1–5 of Senate Rep. (Legislative Materials 91b–103b). S. 1969, as introduced, is reprinted at Legislative Materials 1b–6b].

(13) "Charter service" means air transportation performed by an air carrier holding a certificate of public convenience and necessity where the entire capacity of one or more aircraft has been engaged for the movement of persons and their baggage or for the movement of property on a time, mileage, or trip basis, *but shall not include transportation services offered by an air carrier to individual members of the general public or performed by an air carrier under an arrangement with any person who provides or offers to provide transportation services to individual members of the general public, other than as a member of a group on an all-expense-paid tour.*[17]

In explaining the purpose of this definition, the Report of the Senate Commerce Committee stated:

> However, it is not the intention of the committee to permit individually ticketed service to be offered under the guise of charter. The proposed statutory definition, therefore, provides that charter shall not include such individually ticketed service whether offered by an air carrier directly or by a travel agent.
>
> This restriction is subject to one exception because there is one circumstance in which a carrier or travel agent may offer the services to individual members of the public and *still conform to the traditional concept of charter.* This is in connection with an all-expense-paid group tour. *If a travel agent charters an aircraft for an all-expense-paid tour and then offers to individual members of the public the right to participate as a member of the group, this is a*

[17] S. 1969, 87th Cong., 1st Sess., Section 1. (Legislative Materials 92b; emphasis added).

very different sort of service from individually ticketed transportation.[18]

Although the Senate bill authorized both types of operations, there were important reasons why the Senate Report emphasized the difference between charter service, including inclusive-tour charters, and individually-ticketed service. The other provisions of the bill show that the definition was an integral element in the balance which the Senate proposed to make between the interests of the supplementals and of the scheduled-route carriers.[19] In authorizing the Board to issue certificates for individually-ticketed service, the Senate bill provided that these certificates "shall contain such limitations * * * as the Board finds are required to insure that such service will not result in significant diversion of traffic" from any scheduled-route carrier;[20] upon a finding that a supplemental carrier's individually-ticketed service would significantly divert traffic from a regular carrier serving the same two points, the Board was specifically authorized to limit, in the certificate, the number of scheduled flights which the supplemental carrier could make.[21] With respect to the supplementals' charter service (which specifically covered inclusive tours), however, the Board was not authorized to issue certificates containing limitations designed to protect the scheduled carriers. The significance of the Senate bill's

[18] Senate Rep. at 13–14 (Legislative Materials 120b–121b; emphasis added).

[19] See Senate Rep. at 14–15 (Legislative Materials 122b–124b).

[20] S. 1969, 87th Cong., 1st Sess., Section 2 (Legislative Materials 93b).

[21] *Id.* at Section 3 (Legislative Materials 94b–95b).

definition of "charter service," therefore, was not to grant the Board authority which it otherwise would have lacked, but rather to preclude the Board from adopting a broader definition which would have permitted supplementals to maintain individually-ticketed service, "under the guise of charter," without limitations to protect the scheduled carriers.

The bill passed by the House, on the other hand, did not authorize the Board to issue certificates to supplementals for individually-ticketed service on a restricted-schedule basis.[22] "Supplemental air transportation" was defined as "charter trips in air transportation * * * to supplement the scheduled service authorized by certificates of public convenience and necessity issued [to regular route carriers] pursuant to sections 401(d) (1) and (2) of this Act."[23] The House bill contained no definition of "charter trips." The Report of the House Committee on Interstate

[22] See House Rep. at 11–12 (Legislative Materials 42b–45b): "[A]ny air carrier certificated to operate individually ticketed service over a route should be able to do so without CAB-imposed limitations on the frequency of service. If there is room for competition over a route, the CAB has authority in section 401 to certificate additional carriers. If there is not room for such competition, the Board should not be free to avoid the consequences of competition by limiting the volume of service to be provided by one, some, or all of the carriers in the market" (*id.* at 12, Legislative Materials 44b).

[23] H.R. 7318, 87th Cong., 1st Sess., Section 1 (Legislative Materials 18b) (references to the House bill are to the substitute bill (also designated H.R. 7318), prepared and reported out by the House Interstate and Foreign Commerce Committee and passed by the House, which is reprinted at pp. 1–5 of House Rep. (Legislative Materials 17b–30b). H.R. 7318, as introduced, is reprinted at Legislative Materials 7b–11b).

and Foreign Commerce explained this omission as follows:

> The supplementals recommended that a definition of charter be written into the bill and this was given consideration by your committee. The bill passed by the Senate has such a definition.
>
> Your Committee, however, after considering the problem came to the conclusion that under the circumstances, *authority to define charter services should be left, as at present, with the Board, subject to the limitations contained in the reported bill. This is a very difficult subject and any effort to freeze a definition of charter service into law could well lead to complications.*[24]

In place of the Senate bill's language specifically directing the Board to protect the interests of the regular-route carriers, the House bill provided that "Any certificate issued [for supplemental air transportation] * * * shall contain such limitations as the Board shall find necessary to assure that the service rendered pursuant thereto will be limited to supplemental air transportation as defined in this Act." [25]

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[24] House Rep. at 11 (Legislative Materials 42b; emphasis added in part). No provision of the House bill expressly defines charter or limits the Board's definition. The statement in the Committee Report that the Board's authority to continue to define charter is "*subject to the limitations contained in the reported bill*" appears to refer to the restrictions the Board may include in a certificate for supplemental transportation. See H.R. 7318, 87th Cong., 1st Sess., Section 2 (Legislative Materials 18b), quoted in the text accompanying the following note; *id.* Section 3 (Legislative Materials 19b–20b).

[25] H.R. 7318, 87th Cong., 1st Sess., Section 2 (Legislative Materials 18b).

The bill which emerged from the Conference Committee and which was subsequently enacted by the Congress adopted the provisions of the House bill discussed above.[26] The Conference Committee Report stated that the Senate conferees had agreed to the House version "with respect to the prohibition of individually ticketed and waybilled services on a permanent basis." [27] It offered no explanation for the omission of a definition of "charter" in the compromise bill which followed the House version.[27]

3. It is clear from the foregoing that the Congressional resolution of the conflicting economic interests of the supplementals and the regular carriers contained two basic elements: the Board was precluded from authorizing the supplementals to operate limited-schedule, individually-ticketed service on a permanent basis; [28] and the Board was authorized, as it previously had been, to evolve a definition of "charter" which would effectuate the purposes of the legislation, consistent with preventing the supplementals

[26] See H. Rep. No. 1950, 87th Cong., 2d Sess., pp. 1–2 (Legislative Materials 173b–174b; hereinafter cited as Conference Rep.).

[27] Conference Rep. at 14 (Legislative Materials 200b).

[28] The 1962 amendments permitted two exceptions to the general rule forbidding supplemental carriers to provide individually-ticketed services. Section 9 of Public Law 87–528 provided a two-year period, now expired, during which the Board could authorize such services in order "to permit an orderly transition to an all-charter operation." See Conference Rep. at 7 (Legislative Materials 186b). New Section 417 of the Act (49 U.S.C. 1387) empowers the Board to issue a "special operating authorization" for a period of 30 days, subject to renewal for a maximum of 60 additional days, enabling a supplemental carrier to engage in individually-ticketed operations. Such author-

from operating, under the guise of charter, the type of individually-ticketed service which Congress rejected.

There is plainly no merit in respondents' contention, which the court below apparently adopted, that the failure to include the Senate definition in the bill as finally passed constituted a congressional determination to preclude the Board from authorizing inclusive-tour charters. In the first place, the specific reference to the inclusive-tour concept in the Senate definition was not intended in any way to enlarge the Board's authority; the Committee Report specifically stated that inclusive tours "conform to the traditional concept of charter" and are "a very different sort of service from individually ticketed transportation." [29]

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ization may be issued only on a finding that "the capacity for air transportation being offered by the holder of a certificate of public convenience and necessity between particular points in the United States is, or will be, temporarily insufficient to meet the requirements of the public or the postal service," or that there is a temporary requirement for such service between two points not regularly served by a scheduled carrier. See House Rep. at 12–13 (Legislative Materials 45b–46b).

[29] Senate Rep. at 13–14 (Legislative Materials 120b–121b); see text accompanying note 18, *supra*. Prior to 1966, the Board as a matter of policy, had not authorized inclusive-tour charters, see 14 C.F.R. 207.1 (January 1, 1966), and the Senate Report criticized the "artificial restrictions which have been imposed by Board regulations * * * particularly in international air transportation." Senate Rep., *supra*. The Board had approached the inclusive-tour concept, however, by not requiring prior "affinity" of a group before it could obtain charter transportation. See *Pan American World Airways, Inc., IATA Agreements*, 23 C.A.B. 275, 280–281 (1956); *IATA Agreements, Group Excursion Fares*, 26 C.A.B. 755, 756 (1958). See also *International Airfreight Forwarder Investigation*, 27 C.A.B. 658, 668–669 (1958) (authorizing freight forwarders to charter air-

Second, the elimination of authority for individually-ticketed service in the Conference Committee version of the bill rendered the Senate definition inappropriate. As noted above, the primary purpose of the Senate definition was to delimit the types of supplemental service which could be authorized without restrictions to protect the scheduled carriers. When the provisions for individually-ticketed service were eliminated, the protection of the scheduled carriers rested entirely within the exercise of the Board's authority to issue certificates for charter service.[30] In this context, it is apparent that Congress adopted the House position that "any effort to freeze a definition of charter service into law could well lead to complications."[31] And it is entirely inconsistent with the subsequent floor statements by the advocates of measures to protect the scheduled carriers [32] that the Conference Committee did

craft for transportation of cargoes consolidated from individual shippers).

[30] See Section 401(e)(4) of the Act, 49 U.S.C. 1371(e)(4), which authorizes the Board to issue certificates for supplemental charter transportation which limit the carrier's right to change or add to its schedule; in the Senate bill this authority was limited to certificates permitting individually-ticketed service. See text accompanying notes 19–21, *supra*.

[31] As shown above, see pp. 14–15, *supra*, the Senate bill would have *required* the Board to consider inclusive-tour charters to be within the meaning of the term "charter" as it is applied to both scheduled and supplemental carriers. In the absence of any experience by the Board in regulating inclusive-tour charters, Congress could not foresee what type of abuses this authority might present or whether the Board would be able to correct any abuses by regulation.

[32] See notes 38–40, *infra*, and accompanying text.

not include a definition which would have prohibited inclusive-tour charters.

Finally, it should be emphasized that neither the House Report nor the language of the House bill would have prevented the Board from authorizing inclusive-tour charters.[33] It is no more reasonable to argue that the Congress intended to create this limitation by enacting the House provisions than it would be to argue that the House itself intended that result when it passed its version of the bill.

On several occasions, this Court has indicated that, where resort to legislative history is necessary to resolve apparent ambiguity in a statutory term, the committee reports are the best indicia of Congressional intent.[34] Applying this principle to the statutory provision here in issue, the District of Columbia Circuit has held in two cases that: "Congress intended * * * that the Board should be free to evolve a definition" of charter in accordance with the needs of the air transportation system, so long as it preserves "the distinction between group and individually ticketed travel."[35]

In contrast, the court below based its decision primarily upon statements by certain members of Congress in the floor debates on final enactment of the bill. In so doing, the court demonstrated the wisdom of

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[33] See text accompanying notes 23–25, *supra*.

[34] *United States* v. *United Automobile Workers*, 352 U.S. 567, 585; *Duplex Printing Press Co.* v. *Deering*, 254 U.S. 443, 474.

[35] *American Airlines, Inc.* v. *Civil Aeronautics Board*, 348 F. 2d 349, 354; *American Airlines, Inc.* v. *Civil Aeronautics Board*, 365 F. 2d 939, 949.

the rule, which it cited but did not follow, that the "debate is not entitled to the same weight as 'carefully considered committee reports'" (R. 1142a).[36] The court did not refer to the statement of Senator Monroney, the Chairman of the Senate Commerce Committee, that the charter definition was eliminated by the Conference Committee "because of the decision which had been made on individually ticketed authority." Senator Monroney advised the Senate that this action was intended to give the Board wider latitude in defining charters than it would have had under the Senate provision, because the supplementals were to be confined to charter service.[37] Instead, the court

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[36] Quoting from *United States* v. *United Automobile Workers*, 352 U.S. 567, 585.

As Mr. Justice Jackson stated in his concurring opinion in *Schwegmann Bros* v. *Calvert Corp.*, 341 U.S. 384, 395–396:

> Resort to legislative history is only justified where the face of the Act is inescapably ambiguous, and then I think we should not go beyond Committee reports, which presumably are well considered and carefully prepared. I cannot deny that I have sometimes offended against that rule. But to select casual statements from floor debates, not always distinguished for candor or accuracy, as a basis for making up our minds what law Congress intended to enact is to substitute ourselves for the Congress in one of its important functions. * * * It is the business of Congress to sum up its own debates in its legislation. Moreover, it is only the words of the bill that have presidential approval, where that approval is given. It is not to be supposed that, in signing a bill, the President endorses the whole Congressional Record. * * *

[37] 108 Cong. Rec. 12283 (Legislative Materials 235b–236b). The legislative history of the 1962 amendments illustrates the type of conflicting interpretations which a court must resolve when it seeks to rely on the floor debates. Senator Monroney specifically stated that the Conference Committee bill, unlike the Senate bill, gave the "Board sufficient flexibility so that it

relied on statements opposing inclusive-tour charters by several members of the Conference Committee (R. 1137a–1142a). Most of these statements, however, are entirely consistent with the House position that there should be no statutory definition of charter, so that the Board would be able to deal effectively with any attempt to use the charter authority, including inclusive tours, as a subterfuge for individually-ticketed service.[38] Only Senators Scott and Cotton took the unequivocal position that the Act precluded the Board from authorizing inclusive-tour charters.[39] But to the extent that any of these statements assert that inclusive-tour charters are prohibited, they contradict both the committee reports and the normal meaning of the statutory language itself. The statements on which the court below relied were an apparent attempt, after all differences had been resolved in conference and the agreement embodied in a compromise bill, to engraft upon the bill a limitation which has no support in the prior legislative history.[40] Since both the Senate

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might permit split charters" (*ibid.*). Representative Walter, on the other hand, interpreted the Conference bill as prohibiting split charters. 108 Cong. Rec. 12323 (Legislative Materials 232b); see *American Airlines, Inc.* v. *Civil Aeronautics Board*, 348 F. 2d 349 (C.A.D.C.), *supra* note 5.

[38] See 108 Cong. Rec. 12324 (Legislative Materials 233b, remarks of Representative Collier).

[39] Senator Cotton was the author of the provision adopted by the Senate Commerce Committee which required the Board to include restrictions in supplemental certificates for the protection of scheduled carriers. See S. Rep. at 15 (Legislative Materials 123b); text accompanying notes 19–21, *supra*.

[40] Compare the identically worded statements delivered by Representative Harris, 108 Cong. Rec. 12323 (Legislative Materials 231b–232b), and by Representative Collier, *supra* note 38.

bill and the House bill as interpreted by the House Report preclude the interpretation which these statements assert, the court below plainly erred in giving dispositive effect to these individual views. As this Court recently observed in *Hardin* v. *Kentucky Utilities Co.*, No. 40, this Term, decided January 16, 1968 (Slip op., p. 10), "the views of those who sought the most restrictive wording cannot control interpretation of the compromise version."

B. THE BOARD'S DEFINITION OF "CHARTER" SERVICE AS COVERING INCLUSIVE TOURS IS REASONABLE AND SHOULD BE UPHELD BY THE COURTS

As this Court has often decided, the meaning given a statutory term by the agency charged with its enforcement will be respected by the courts if it is fairly comprehended by the language and purpose of the statute, even though another interpretation might also be reasonable. See, *e.g.*, *Udall* v. *Tallman*, 380 U.S. 1, 16; *National Labor Relations Board* v. *Coca-Cola Bottling Co.*, 350 U.S. 264; *Gray* v. *Powell*, 314 U.S. 402, 411–413. In *Hardin* v. *Kentucky Utilities Co.*, *supra*, the Court reaffirmed this rule, stating that the agency determination "is entitled to acceptance unless it lies outside the range of permissible choices contemplated by the statute" (Slip op., p. 7); accordingly, the courts should take the agency determination "as their starting point and * * * set this determinaion aside only when it lacks reasonable support in relation to the statutory purpose" (Slip op., p. 8). Deference to the Board's interpretation is particularly appropriate in the present case because the orders here on review represent the initial stages of the Board's efforts to enforce a new

regulatory scheme which embodies a new concept of all-charter operations for the supplemental air carrier industry. Cf. *Power Reactor Co.* v. *Union of Electrical Workers*, 367 U.S. 396, 408.

1. The Board's interpretation of charter is consistent with the established meaning of that term in surface transportation. In the leading case of *Tauck Tours, Inc.*,[41] the Interstate Commerce Commission held that a travel agent offering all expense tours to the general public was authorized to charter buses from motor carriers licensed to engage only in charter services and was not limited to the use of carriers licensed to provide individually-ticketed service. In answering the contention that the all-expense tours were a subterfuge for individually-ticketed transportation, the Commission stated that the participants in such tours

> have more than just a mere desire to travel between the same points. They are participants in a group which will maintain its identity for some predetermined period of time, be under the direction of a guide, and enjoy substantially identical accommodations and experiences. * * * [B]y agreeing to become group members for the sake of the group advantages, [they] achieve a degree of cohesiveness such that, even though the group was organized by [a travel agent], it is entitled * * * to deal with the carriers as a group and to buy charter service for the group from the carriers * * *."[42]

[41] *Tauck Tours, Inc., Extension—New York, N.Y.*, 52 M.C.C. 373 (1951).

[42] *Id.* at 376.

A three-judge district court affirmed the Commission's conclusion, stating that "a good deal more than bare individual transportation is involved. The tour is attractive because it is a group adventure * * *. The important thing is that the Tauck group is a cohesive whole interested in a tour for pleasure, and not in mere transportation."[43] This Court affirmed *per curiam*, 352 U.S. 1020.

The court below found this precedent "not at all persuasive" on the ground that "the Motor Carrier Act is quite different from the Federal Aviation Act in language, statutory structure and legislative history" (R. 1142a). This misses the mark, however. The question is not whether the term charter in the Federal Aviation Act must be given the same construction applied to the Motor Carrier Act, but whether Congress intended to preclude the Board, in the exercise of its regulatory authority, from interpreting "charter" in air transportation in accord with its established meaning in surface transportation. The legislative history of the 1962 amendments persuasively demonstrates that the authorization of inclusive tours as charters was contemplated by the Congress, and as discussed above, there is nothing in that history which shows a Congressional determination to deny the Board this authority. In the absence of an unambiguous expression of congressional intent to adopt a unique definition of charter in air transportation, the courts should respect the Board's determination that the applica-

[43] *National Bus Traffic Ass'n* v. *United States*, 143 F. Supp. 689, 696–697 (D. N.J.).

tion of that term's established meaning in surface transportation would best serve the policies of the Act.

2. The inclusive-tour authorizations effectuate the overall purpose of the 1962 amendments, which was to establish a stable and viable role for the supplemental carriers in the air transportation system. Congress intended to strengthen the economic position of the supplemental carriers because of the public importance of their civilian and military operations and because of the relationship between economic stability and air safety. See *American Airlines, Inc.* v. *Civil Aeronautics Board*, 365 F. 2d 939, 945 (C.A.D.C.). In view of the fact that the supplementals may be authorized to perform only charter services, the Board properly determined that the scope of this authority should be broad enough to assure that these carriers can continue to meet the needs of the public. The Board agreed with the examiner's finding that authorization for inclusive-tour charters would "lend economic strength to the supplemental carriers * * * by making available needed additional sources of civil revenues" (R. 140a), and it added (R. 553a):

> These carriers have proved to be an essential factor in our national defense civil augmentation airlift system, making substantial contributions in time of national crisis. The United States thus has a sizeable stake in their continued survival and viability. Inclusive tour authority will make a contribution to that continued viability. * * *

The additional revenues which the supplementals will derive from inclusive-tour charters is especially significant at the present time. Their principal source

of revenue in the past has been military charters. As the examiner pointed out, however (R. 75a), under a new Defense Department commercial airlift policy instituted in 1966, only those carriers receiving at least 30 percent of their air transportation revenues from commercial sources will be awarded military contracts, and it is anticipated that the required percentage of revenue from commercial sources will reach 60 percent. If the supplementals are not permitted to enlarge their civilian services, they may be unable to retain the mainstay of their charter operations, and it is unlikely that they would be able to purchase costly new aircraft to attract civilian passengers.

Furthermore, the inclusive-tour charter is an example of the creative role which the supplementals can play in the air transportation system. The Board limited the inclusive-tour authorization for an experimental five-year period, during which it can determine the effect which this type of service has on the economic growth of the industry as a whole. It is likely, as the examiner found (R. 119a–123a), that inclusive tours will generate new traffic because they would appeal especially to the low-income, first-time travelers who would, because of their inexperience, prefer to leave all of the complicated details in the hands of an experienced tour operator.

3. The regulations adopted by the Board to govern inclusive-tour charter operations give effect to another important purpose of the 1962 amendments—to prevent the supplementals from offering individually-ticketed, point-to-point service in competition with

the scheduled carriers.[44] In view of its holding that Congress did not give the Board power to authorize inclusive tours, the court below asserted that it need not consider the effect of the regulations. We submit that the court's approach was far too narrow. Given its most restrictive interpretation, the legislative history of the statute fairly suggests only that the Board's power to evolve a definition of charter is limited by the requirement that it "preserve the distinction between group and individually ticketed travel."[45] Without examination of the particular type of service which the Board authorized and its relationship to the service offered by the scheduled carriers, a court cannot properly determine whether this distinction has been maintained.

The Board's regulations, which were made specific conditions of the certificates involved in this case, "should obviate any inducement to substitute travel on inclusive tours for point-to-point transportation" (R. 352a). These regulations specifically require, *inter alia:* (1) that the tour price cannot be less than 110% of the lowest available individual fare offered by a scheduled carrier for transportation over the same route, and must include at least all hotel accommodations and air or surface transportation between all places on the itinerary; (2) that every tour must be performed on a round-trip basis, lasting at least seven days, with a minimum of three overnight stops

[44] See *American Airlines, Inc.* v. *Civil Aeronautics Board*, 365 F. 2d 939, 945, 947–948 (C.A.D.C.).

[45] *American Airlines, Inc.* v. *Civil Aeronautics Board*, 348 F. 2d 349, 354 (C.A.D.C.).

(each stop to be at least 50 miles apart); (3) that every tour must be operated by a regulated tour operator pursuant to prior approval by the Board of the tour prospectus (including review of the operator's qualifications and financial condition, the itinerary, and the tour price and related costs); and (4) that each scheduled carrier serving the points involved in the tour be given notice of the application and an opportunity to object (14 C.F.R. 378.2, 378.10–378.15).

It would be unreasonable to assume that an individual desiring nothing more than point-to-point transportation would pay 110 percent of the lowest individually-ticketed fare, a price which includes hotel accommodations, merely to part company with the group and seek out other accommodations for which he would also have to pay. Similarly, such a person would be unlikely to participate in a trip requiring him to visit two other places and remain for at least seven days. As the Board pointed out (R. 344a):

> In exchange for realizing the price savings accruing from the economies of planeload charter operations, the charter tour passenger is subjected to the rigidities of a group itinerary, must be willing to travel and share facilities with strangers, and must agree to the necessary regimentation that is entailed in group travel. Nor will he have the freedom to select from the multiple daily schedules offered by route carriers, but will be confined to predetermined departure and arrival times selected by the tour operator.

The participants in an inclusive tour, under the Board's regulations, will manifestly be undergoing an

experience in group travel as a "cohesive unit" which will "qualify as charter * * * under the Act" (R. 350a).

II. THE PROCEDURAL ISSUES RAISED BY RESPONDENTS BELOW, BUT NOT DECIDED, ARE WITHOUT MERIT, AND THIS COURT SHOULD DISPOSE OF THEM WITHOUT REMANDING FOR FURTHER PROCEEDINGS

In view of its holding that the Board did not have statutory power to authorize inclusive-tour charters, the court below did not reach respondents' contention that the orders were invalid by reason of certain procedural defects. If this Court holds that the court below erred in its interpretation of the statute, we urge the Court to rule on the remaining issues in the case without remanding to the court of appeals for further proceedings.[46] A final disposition of the case at this stage is in the public interest, because the inclusive-tour authority bears importantly on the competitive strength of the supplemental carriers involved and may generate increased foreign travel to the United States (R. 550a–552a).

Respondents' procedural contentions relate only to the six certificates issued in the *Reopened Transatlantic Charter Investigation*. In the court below respondents contended that the orders were invalid for the following reasons: (1) under this Court's decision in *Civil Aeronautics Board* v. *Delta Air Lines, Inc.*, 367

[46] See, *e.g.*, *Chicago & N.W.R. Co.* v. *Atchison, T. & S.F. R. Co.*, 387 U.S. 326, 351–356; *Levin* v. *Mississippi River Fuel Corp.*, 386 U.S. 162, 170; *Accardi* v. *Pennsylvania R. Co.*, 383 U.S. 225, 232–233; *Consolo* v. *Federal Maritime Commission*, 383 U.S. 607, 621.

U.S. 316, further hearings were required with respect to the award of inclusive-tour authority to two carriers (Capitol Airways and Saturn Airways) because it was granted in the form of amendments to their previously issued certificates; (2) the record was stale and should have been reopened for further evidence; and (3) the awards rested upon officially-noticed data which respondents were given no opportunity to rebut.[47] The Board argued that these contentions were not subject to review under the doctrine of *Chicago & S. Air Lines* v. *Waterman Steamship Corp.*, 333 U.S. 103, because the orders had been approved by the President pursuant to 49 U.S.C. 1461.[48] The *Waterman* doctrine, however, raises a jurisdic-

[47] In addition, respondents contended that the Board's recommendation to the President was void because it was entered by a 2–1 vote of the 5-member Board. We assume that this contention has been abandoned, in view of the decision of this Court in *Federal Trade Commission* v. *Flotill Products, Inc.*, 389 U.S. 179. Moreover, the Federal Aviation Act specifically provides that "three of the members shall constitute a quorum of the Board" (49 U.S.C. 1321(c)).

[48] The Board also urged below that the issue discussed in point I, *supra*—the Board's power to authorize inclusive-tour charters—was not reviewable. This contention, however, was not based upon *Waterman* but on the ground that the Board's authority had already been litigated and resolved in the domestic inclusive tour case to which respondents were parties. *American Airlines, Inc.* v. *Civil Aeronautics Board*, 365 F. 2d 939 (C.A.D.C.). Under constructions of *Waterman* adopted by the lower courts without objection by the government, the Board's power to enter an order—as distinguished from procedural errors in the process of entering it—is reviewable by the courts even if that order is subject to Presidential approval. *American Airlines, Inc.* v. *Civil Aeronautics Board*, 348 F. 2d 349 (C.A.D.C.). See *Pan American World Airways, Inc.* v. *Civil Aeronautics Board*, C.A.D.C., Nos. 20,360 and 21,149 (decided January 31, 1968).

tional question of constitutional dimensions. Because respondents' procedural contentions are so clearly without merit, we submit that the Court need not reach the *Waterman* issue, and that it should rule on the merits of these contentions. See, *e.g., Rabinowitz* v. *Kennedy,* 376 U.S. 605, 607; *Secretary of Agriculture* v. *Central Roig Refining Co.,* 338 U.S. 604, 619–620; *Brooks* v. *Dewar,* 313 U.S. 354, 359–360.

1. Respondents' contention that *Delta Air Lines* required further hearings in the awards of inclusive-tour authority to Capitol and Saturn was raised for the first time in the court of appeals and is therefore barred under 49 U.S.C. 1486(e), which precludes judicial review of any objection which a party has not first raised before the Board. In all events, further hearings were not required. In *Delta Air Lines,* this Court held that the Board, on a petition for reconsideration, could not withdraw a certificate which had become effective without conducting further hearings under 49 U.S.C. 1371(g), which requires such hearings when an effective certificate is modified or amended.

The history of the *Transatlantic Charter Investigation,* however, shows that the present case involves the postponed granting of a continuing application and does not affect the security of rights conferred on a carrier by its certificate, which was the issue in *Delta Air Lines.* After full litigation of the inclusive-tour issue, the Board issued an order in 1963 awarding transatlantic charter certificates to three supplemental carriers, but withheld inclusive-tour authority because it found the transatlantic operations of the scheduled carriers were still financially insecure and that inclu-

sive-tour authority for the supplementals would "increase the diversion" from the regular carriers "to a degree not warranted by the attendant benefits of allowing such charters *at the present time*" (R. 861a, emphasis added).

The President approved the Board's decision to award certificates to Saturn and Capitol (two of the three carriers then involved) (R. 777a), but did not dispose of the Board's recommendation that the applications for inclusive-tour authority should not be granted at that time; for this reason the Board "treated as premature, requests for reconsideration of its denial of all-expense tour authority" (R. 961a). In September 1965, the Board reopened the *Transatlantic* case to reexamine the question of inclusive-tour authority (R. 960a–962a). At the Board's invitation to discuss the adequacy of the record, respondents argued that the record was unduly stale (R. 963a, 968a). They did not suggest, however, that further hearings as to Capitol and Saturn would be required under 49 U.S.C. 1371(g).

In the *Transatlantic* order here on review, the Board rejected respondents' contention of staleness. On examination of the earlier record and of respondents' reports of the financial and operational results for the years subsequent to 1963, the Board found that their strength and resources for continuing transatlantic service could no longer be questioned, and accordingly, that its earlier grounds for denying inclusive-tour authority to the supplementals had disappeared (R. 1067a). With the approval of the President, the Board awarded inclusive-tour authority to

Capitol and Saturn (R. 1077a), and subsequently, to four other supplemental carriers (R. 1105a).

The foregoing history demonstrates that the award of inclusive-tour authority to Saturn and Capitol was not so much a modification of their outstanding certificates as it was a disposition of pending applications by all six supplementals. The certificates of Capitol and Saturn were only partial grants; their applications for inclusive-tour authority had been neither granted nor denied. Since the other supplementals had not previously received transatlantic certificates, their inclusive-tour authority was expressed in a wholly new certification. Whether the newly granted authority was expressed as an amendment or as a new certificate was, in these circumstances, a matter of form not substance. In all events, the award was made on the basis of full hearings in which the inclusive-tour issue had been thoroughly explored; this satisfies the requirements of 49 U.S.C. 1371(g).

2. The adequacy of the already lengthy record was plainly a matter committed to the agency's discretion (see *Interstate Commerce Commission* v. *City of Jersey City*, 322 U.S. 503; *United States* v. *Pierce Auto Freight Lines, Inc.*, 327 U.S. 515). Upon consideration of the previous hearings and the parties' submissions, the Board determined that there was no additional factual matter bearing on the issues which was not already available to it. Its decision was certainly not unreasonable.

3. The principal matters officially noticed were respondents' own reports of their financial and operating results for the years subsequent to 1963. The

Board's regulations specifically provide that it may consider data contained in reports of carriers which have been publicly filed up to the time of decision (14 C.F.R. 302.24(m)). Respondents had the right to an opportunity to rebut the matters of which the Board took official notice (5 U.S.C. (Supp. II) 556(e)), but they never made such a request of the Board nor have they specified what, if any, additional factual showing they intended to make. It was on the basis of respondents' own reports that the Board concluded that "the basic financial and operational soundness of Pan American and TWA may no longer be questioned" (R. 1067a). We do not understand respondents to suggest that their reports are inaccurate. They suffered no prejudice from official notice of such matters. *Civil Aeronautics Board* v. *State Airlines, Inc.*, 338 U.S. 572; *United States* v. *Pierce Auto Freight Lines, Inc.*, *supra*.

CONCLUSION

For the foregoing reasons, the judgment of the court of appeals should be reversed and the cause should be remanded with directions to affirm the Board's orders.

Respectfully submitted.

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APPENDIX

Statute Involved

Relevant provisions of the Federal Aviation Act, 72 Stat. 731, as amended, 49 U.S.C. 1301 *et seq.*:

TITLE I—GENERAL PROVISIONS

Definitions

SEC. 101 [72 Stat. 737, as amended by 75 Stat. 467, 76 Stat. 143, 49 U.S.C. 1301] as used in this Act, unless the context otherwise requires—

* * * * * *

(10) "Air transportation" means interstate, overseas, or foreign air transportation or the transportation of mail by aircraft.

* * * * * *

(32) "Supplemental air carrier" means an air carrier holding a certificate of public convenience and necessity authorizing it to engage in supplemental air transportation.

(33) "Supplemental air transportation" means charter trips in air transportation, other than the transportation of mail by aircraft, rendered pursuant to a certificate of public convenience and necessity issued pursuant to section 401(d)(3) of this Act to supplement the scheduled service authorized by certificates of public convenience and necessity issued pursuant to sections 401(d)(1) and (2) of this Act.

* * * * * *

TITLE IV—AIR CARRIER ECONOMIC REGULATION

CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

Certificate Required

Sec. 401. [72 Stat. 754, as amended by 76 Stat. 143, 49 U.S.C. 1371] (a) No air carrier shall engage in any air transportation unless there is in force a certificate issued by the Board authorizing such air carrier to engage in such transportation.

* * * * *

Issuance of Certificate

(d)(1) The Board shall issue a certificate authorizing the whole or any part of the transportation covered by the application, if it finds that the applicant is fit, willing, and able to perform such transportation properly, and to conform to the provisions of this Act and the rules, regulations, and requirements of the Board hereunder, and that such transportation is required by the public convenience and necessity; otherwise such application shall be denied.

(2) In the case of an application for a certificate to engage in temporary air transportation, the Board may issue a certificate authorizing the whole or any part thereof for such limited periods as may be required by the public convenience and necessity, if it finds that the applicant is fit, willing, and able properly to perform such transportation and to conform to the provisions of this Act and the rules, regulations, and requirements of the Board hereunder.

(3) In the case of an application for a certificate to engage in supplemental air transportation, the Board may issue a certificate, to any applicant not holding a certificate under paragraph (1) or (2) of this subsection, authorizing the whole or any part thereof, and for such

periods, as may be required by the public convenience and necessity, if it finds that the applicant is fit, willing, and able properly to perform the transportation covered by the application and to conform to the provisions of this Act and the rules, regulations, and requirements of the Board hereunder. Any certificate issued pursuant to this paragraph shall contain such limitations as the Board shall find necessary to assure that the service rendered pursuant thereto will be limited to supplemental air transportation as defined in this Act.

* * * * *

TITLE VIII—OTHER ADMINISTRATIVE AGENCIES

THE PRESIDENT OF THE UNITED STATES

Sec. 801. [72 Stat. 782, 49 U.S.C. 1461] The issuance, denial, transfer, amendment, cancellation, suspension, or revocation of, and the terms, conditions, and limitations contained in, any certificate authorizing an air carrier to engage in overseas or foreign air transportation, or air transportation between places in the same Territory or possession, or any permit issuable to any foreign air carrier under section 402, shall be subject to the approval of the President. Copies of all applications in respect of such certificates and permits shall be transmitted to the President by the Board before hearing thereon, and all decisions thereon by the Board shall be submitted to the President before publication thereof.

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TITLE X—PROCEDURE

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JUDICAL REVIEW OF ORDERS

Orders of Board and Administrator Subject to Review

Sec. 1006. [72 Stat. 795, as amended by 74 Stat. 255, 75 Stat. 497, 49 U.S.C. 1486] (a)

Any order, affirmative or negative, issued by the Board or Administrator under this Act, except any order in respect of any foreign air carrier subject to the approval of the President as provided in section 801 of this Act, shall be subject to review by the courts of appeals of the United States or the United States Court of Appeals for the District of Columbia upon petition, filed within sixty days after the entry of such order, by any person disclosing a substantial interest in such order. After the expiration of said sixty days a petition may be filed only by leave of court upon a showing of reasonable grounds for failure to file the petition theretofore.

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